

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Olayinka Ajamu Babatunde/Michael)	
McCoy,)	C/A No. 4:09-2156-MBS
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
Katherine Carruth Link,)	
)	
Defendant.)	
_____)	

Plaintiff Olayinka Ajamu Babatunde is an inmate in custody of the South Carolina Department of Corrections. Plaintiff, proceeding pro se, brings this action against Defendant Katherine Carruth Link, the attorney who represented Plaintiff on his direct appeal from his criminal conviction in state court. Plaintiff contends that his right to effective representation under the Sixth Amendment was violated, and he seeks \$2 million in compensatory damages and \$3 million in punitive damages. Plaintiff brings this action pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act. The Magistrate Judge filed a Report and Recommendation on November 16, 2009. The Magistrate Judge noted that Defendant, an attorney, did not act under color of state law, and thus the jurisdictional prerequisite for a § 1983 action had not been met. The Magistrate Judge recommended that the complaint be summarily dismissed without prejudice and without issuance and service process for lack of subject matter jurisdiction. Plaintiff filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within complaint is dismissed without prejudice and without issuance and service of process upon Defendant.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

December 10, 2009.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.